

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALFRED GRAYSON, No. 2:03-cv-1694-MCE-KJM-P

Petitioner,

v.

ORDER

TOM CAREY, et al.,

Respondents.

Petitioner is a state prison inmate proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On September 11, 2006, this court adopted the magistrate judge's August 10, 2006 findings and recommendations and entered judgment.

On September 26, 2006, petitioner filed a notice of appeal and on October 13, 2006, this court issued a certificate of appealability.

On January 29, 2007, petitioner filed a document entitled "application for a stay," but in the body of the pleading, he asks the court to "set aside the denial of petitioner's 2254 petition." Accordingly, the court will treat the motion as one brought under Fed. R. Civ. P. 60(b)(1) for relief from judgment.

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Because the pendency of the appeal in this case has deprived this court of jurisdiction over petitioner’s motion, he must first determine whether this court is willing to consider his motion to vacate the judgment and then seek remand from the Court of Appeals. Williams v. Woodford, 384 F.3d 567, 586 (9th Cir. 2004). In his motion, he argues only that the court should reexamine his petition to correct a “miscarriage of justice” because he has “suffered a direct prejudice from the imposition of life in prison.” He has presented no other reasons suggesting why the judgment entered September 11, 2006 should be reconsidered. Accordingly, the court declines to entertain the motion for relief from judgment.

Dated: March 8, 2007


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE